

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-6137-8]

RIN 2060-ZA04

Regulations of Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program from the Phoenix, Arizona Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: In today's final action, EPA is amending its reformulated gasoline regulations to reflect that the Phoenix, Arizona ozone nonattainment area will not be a covered area in the federal reformulated gasoline (RFG) program as of June 10, 1998. As published elsewhere in this issue of the Federal Register, pursuant to 40 CFR 80.72, EPA has approved the petition by the Governor of Arizona dated September 12, 1997, to opt-out of the federal RFG program and removed the requirement to sell federal RFG in the Phoenix ozone nonattainment area as of June 10, 1998. This effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. This rulemaking will conform the list of covered areas in the regulations to reflect the effective date of the opt-out for the Phoenix area. As of June 10, 1998, Arizona's cleaner burning gasoline state regulations will go into effect in the Phoenix area. Arizona developed a clean fuel program to reduce emissions of volatile organic compounds (VOC) and particulates (PM10). Thus, although opting out of the federal RFG program, the Phoenix area will continue to enjoy the air quality benefits of a clean burning gasoline.

DATES: This final rule is effective [insert date of publication].

ADDRESSES: Materials relevant to this rule to amend § 80.70 of the RFG regulations to reflect the removal of the Phoenix area from the federal RFG program have been placed in Docket A-98-23. Materials relevant to the rule to include the Phoenix area in the federal RFG program may be found in Docket A-97-02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M-1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to the EPA Final Rule to approve the Arizona SIP revision establishing state clean burning gasoline regulations are available in the docket located at Region IX. The docket is located at 75 Hawthorne Street, AIR-2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00 - 4:00 p.m. A reasonable fee may be charged for copying docket material. This approval action is not being addressed in this rule.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney-Advisor, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 564-9856.

SUPPLEMENTARY INFORMATION

Availability on the TTNBBS

Copies of this final rule are available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. An electronic version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

Internet (Web)

<http://www.epa.gov/docs/fedrgstr/EPA-AIR/>

(either select desired date or use Search feature)

<http://www.epa.gov/OMSWWW/>

(look in What's New or under the specific rulemaking topic)

TTN BBS: The TTN BBS can be accessed with a dial-in phone line and a high-speed modem (PH# 919-541-5742). The parity of your modem should be set to none, the data bits to 8, and the stop bits to 1. Either a 1200, 2400, 9600, or 14400 baud modem should be used. When first signing on, the user will be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following series of menus:

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)

<M> OMS - Mobile Sources Information

(Alerts display a chronological list of recent documents)

<K> Rulemaking & Reporting

At this point, choose the topic (e.g., Fuels) and subtopic (e.g., Reformulated Gasoline) of the rulemaking, and the system will list all available files in the chosen category in date order with brief descriptions. To download a file, type the letter "D" and hit your Enter key. Then select a transfer protocol that is supported by the terminal software on your own computer, and pick the appropriate command in your own software to receive the file using that same protocol. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

Regulated entities.

Entities potentially regulated by this action are those which produce, import, supply or distribute gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Refiners, importers, oxygenate blenders, terminal operators, distributors, retail gasoline stations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business would have been regulated by this

action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

A. Opt-out Procedures

Section 80.72 of the RFG regulations (Opt-out Rule) provides the process and criteria for a reasonable transition out of the RFG program if a state decides to opt-out.¹ The procedures for opting out are geared towards achieving a reasonable transition out of the RFG program for industry and states. The Opt-out Rule provides that the Governor of the state must submit a petition to the Administrator requesting to opt out of the RFG program. The petition must include specific information on how, if at all, the state has relied on RFG in a pending or approved SIP and, if RFG is in an approved SIP, how the SIP will be revised to reflect the state's opt-out from RFG. The Opt-out Rule also provides that EPA will notify the state in writing of the Agency's action on the petition and the date the opt-out becomes effective when the petition is approved. The regulations also provide that EPA will publish an FR notice announcing the approval of any opt-out petition and the effective date of such opt-out.

The effective date of the opt-out is dependent on how the RFG program is used by a state in its SIP. Opt-out petitions received prior to December 31, 1997 become effective 90 days (or later

¹ Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

if requested) from the date EPA provides written notification to the state that the petition has been approved. If, however, the state included RFG as a control measure in an approved SIP, the state must revise the SIP to remove federal RFG as a control measure before the opt-out can be effective. For the latter case, the opt-out becomes effective no less than 90 days (or later if requested) after the Agency approves a revision to the state plan replacing RFG with another control. Opt-out petitions received after December 31, 1997 are treated differently. See 62 FR 54552 (October 20, 1997).

B. Arizona Opt-in and Opt-out of RFG for the Phoenix Area

By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal RFG program.² The Governor requested an implementation date of June 1, 1997. Pursuant to the Governor's letter and the provisions of section 211(k)(6) of the Clean Air Act, and after holding a public hearing in Phoenix on March 18, 1997, EPA adopted regulations on May 28, 1997, that applied the requirement to sell RFG to the Phoenix area. 62 FR 30260 (June 3, 1997)³

Arizona subsequently enacted legislation which authorized the establishment of a State cleaner burning gasoline program which would become effective June 1, 1998. By letter dated September 12, 1997, the Governor of the State of Arizona applied to EPA to opt-out of the federal RFG program for the Phoenix area. The Governor requested the specific opt-out effective date of June 1, 1998, to ensure that the federal RFG program would be maintained in

² EPA reclassified the Phoenix area from moderate to serious nonattainment for ozone on November 6, 1997 (62 FR 60001).

³ See Notice of Proposed Rulemaking at 62 FR 7197 (February 18, 1997); and Notice of public hearing at 62 FR 11405 (March 12, 1997).

the Phoenix area until the State RFG regulations became effective. Thus, the Governor requested that EPA approve the State's opt-out petition and set the opt-out effective date only upon EPA approval of the SIP revision containing the Arizona RFG regulations and the waiver request.

EPA's Office of Air and Radiation (OAR) responded to the Governor's petition by letter dated October 3, 1997. EPA stated in the letter that the Governor's petition provided the information required by the Opt-out Rule and that OAR would work with Region IX to process the SIP revision as quickly as possible in order to provide the opt-out effective date requested.

II. Action

In this rule, EPA is amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998. Published elsewhere in this issue of the Federal Register, EPA is announcing its approval of the Governor's petition and the opt-out effective date. The opt-out effective date for the Phoenix area is June 10, 1998. This June 10, 1998, opt-out effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. For a further discussion see [63 FR 6653 (2/10/98)].

In today's final action, EPA is amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998. This amendment will conform the regulations with EPA's approval of the Governor of Arizona's petition to opt-out of the federal reformulated gasoline (RFG) program for the Phoenix area, and removal of the requirement to sell federal RFG in the Phoenix serious ozone nonattainment area as of June 10, 1998.

III. Public Participation

EPA is issuing this final rule without prior notice and comment. The rulemaking

procedures provided in section 307(d) of the Act do not apply when the Agency for good cause finds that the notice and comment procedures under section 307(d) of the Act are impracticable, unnecessary, or contrary to the public interest. CAA Section 307(d)(1). This expedited rulemaking procedure is based on the fact that EPA is amending the CFR today to reflect the approval of Arizona's opt-out petition, based on criteria in EPA regulations for opting out of the federal RFG program.

EPA is simply making a ministerial change to the list of RFG covered areas in the CFR so the list of covered areas in 40 CFR 80.70 will conform to EPA's approval of the Phoenix opt-out request. That approval is a separate action and is not the subject of this rule. For these reasons, EPA finds that notice and comment procedures under section 307(d)(1) of the Act are unnecessary. EPA also finds these circumstances provide good cause under 5 U.S.C. 553(d) for this expedited effective date.

IV. Environmental Impact

Although Arizona has decided to opt-out of the federal RFG program for the Phoenix area, Arizona is replacing the RFG program with a State clean fuel program in its SIP. Under the Arizona fuel program, refiners may provide either a federal RFG-like fuel or a California RFG-like fuel. The state fuel program is expected to achieve air quality benefits similar to those achieved by federal RFG. Thus, the Phoenix area will continue to benefit from the use of a clean burning gasoline. The type of gasoline used in an area does affect its air quality. Gasoline vapors and vehicle exhaust contain VOCs and NO_x that react in the atmosphere in the presence of sunlight and heat to produce ozone, a major component of smog. Vehicles also release toxic emissions, one of which (benzene) is a known human carcinogen. Cleaner burning gasolines,

such as federal and California RFG contain less of the ingredients that contribute to these harmful forms of air pollution. Consequently, these gasolines reduce the exposure of the U.S. public overall to ozone and certain air toxics.

Cleaner burning gasolines such as federal and California RFG generally provide reductions in ozone-forming VOC emissions, toxic emissions, and NO_x emissions. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can damage sensitive lung tissue, reduce lung function, cause lung inflammation, increase susceptibility to respiratory infection, and increase sensitivity of asthmatics to allergens (e.g., pollen) and other bronchoconstrictors. Symptoms from short-term exposure to ozone include coughing, eye and throat irritation, and chest pain. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness.

Toxic emissions from motor vehicles have been estimated to account for roughly half of the total exposure of the urban U.S. population to toxic air emissions. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year. The reduction of benzene provides the majority of air toxics emission reductions from RFG. New monitoring data from the 1995 EPA Air Quality Trends Report shows that in RFG areas, benzene was reduced by 43 percent. A number of adverse non-cancer health effects, such as eye, nose, and throat irritation, have also been associated with exposure to elevated levels of these air toxics.

V. Statutory Authority

The Statutory authority for the action today is granted to EPA by sections 211(c) and (k), 301, and 307 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k), 7601, 7607; and 5 U.S.C. 553(b).

VI. Regulatory Flexibility

The Agency has determined that the rule being issued today is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute. As described above, EPA has determined that there is good cause for exempting this action from notice and comment requirements under Section 307(d) of the Act. The Agency nonetheless has assessed the potential of this rule to adversely impact small entities. EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. Today's final rule is a ministerial action to conform the list of covered areas in EPA regulations to reflect the effective date of EPA's approval of Phoenix's opt-out petition. This ministerial revision of the list of covered areas in the CFR does not have a significant impact on a substantial number of small entities, since it simply reflects the effective date of EPA's approval of the RFG opt-out petition for Phoenix. Because EPA's action to set the effective date for the opt out was not a rulemaking, it was not subject to the RFA. Nonetheless, EPA has determined that setting the

effective date of EPA's approval of Phoenix's opt-out petition does not have a significant impact on a substantial number of small entities. EPA's approval of the opt-out petition, as well as today's rule conforming the list of covered areas to reflect the effective date of that approval, will affect only those refiners, importers or blenders of gasoline and gasoline distributors and retail stations that chose to produce, import, or sell RFG in the Phoenix ozone nonattainment area during the period that Phoenix was a covered area in the federal RFG program (July 3, 1997 - June 10, 1998). These entities will no longer be required to comply with federal RFG requirements in the Phoenix area. Instead, for federal purposes, these entities will be subject to the federal anti-dumping and volatility requirements. Compliance with these requirements will be less burdensome than compliance with the federal RFG requirements.

VII. Executive Order 12866

Under Executive Order 12866⁴, the Agency must determine whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

⁴ See 58 FR 51735 (October 4, 1993).

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.⁵

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VIII. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. OMB has approved the information collection requirements contained in the final RFG/antidumping rule and has assigned OMB control number 2060-0277 (EPA ICR No. 1951.03).

[do we need this second paragraph?] Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond

⁵ Id. At section 3(f) (1) - (4).

to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

IX. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal

intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

X. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to amend the CFR to reflect the removal of the federal RFG program from the Phoenix ozone nonattainment area must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after Federal Register publication]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2).)

XI. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause

finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. section 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established the date of publication as the effective date of this rule. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. The rule is not a major rule as defined by 5 U.S.C. section 804(2).

XII. Children's Health Protection

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling and Motor vehicle pollution, penalties, reporting and recordkeeping requirements.

Date:

Signed:

Carol M. Browner

Administrator

40 CFR part 80 is amended as follows:

Part 80 - [AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.70 is amended by adding two sentences to the end of paragraph (m).

Section 80.70 Covered areas.

* * * * *

(m) * * * The Phoenix, Arizona ozone nonattainment area is a covered area until June 10, 1998. As of June 10, 1998, the Phoenix area will no longer be a covered area.